IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.946 OF 2005

Firdaus Park Co-op.
Housing Society Ltd. ..Petitioner.

Vs.

Municipal Corporation of
Gr. Bombay and Ors. ..Respondents.

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Mr.R.M.Nakhwa with Mr.V.B.Dhavan and
Mr.T.C.Deshpande for the Petitioner.
Mrs.A.R.Joshi for the BMC.
Mr.Anil Singh with Mr.D.R.Singh for Respondent Nos.5 to 10.

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CORAM : DR.D.Y.CHANDRACHUD, J.

25th April, 2005.

P.C. :

1. A co-operative housing society - Firdaus Park Co-operative Housing Society Limited which comprises of flat and shop owners at 80, S.V.Road, Jogeshwari (West), Mumbai 400 102 has moved these proceedings under Article 226 of the Constitution.

The premises of the Petitioner are partly residential and partly commercial. Respondents 5 to 10 are occupants of shops bearing Nos.A-1 to A-6 and B-1 to B-3. These shop owners have defaulted in the payment of property taxes and other statutory dues of the Municipal Corporation which led to the issuance of a warrant of attachment by the Assessor and Collector on 3rd March, 2001. The Petitioner issued notices to these defaulting shopkeepers on 21st August, 2004 and 29th September, 2004 despite which the outstanding dues were not paid. The Municipal Corporation issued a notice on 30th August, 2001 calling upon the Petitioner to pay a sum of Rs.64,13,994/- failing which it was stated that the property would be put up for auction sale. According to the Petitioner, a sum of Rs.63,59,847/- was due from Respondents 5 to 10 as in March 2005. The grievance of the Petitioner is that the Municipal Corporation has attached the property of the co-operative society without proceeding against the defaulters by taking recourse to the provisions of Section 209-A of the Mumbai Municipal Corporation Act, 1888. Section 209-A provides as follows :

"209-A. When tenant-members may be held liable for payment of property taxes due from co-operative housing societies - (1) Notwithstanding anything contained in the Maharashtra Co-operative Societies Act, 1960 or any other law for the time being in force, if any sum due on account of any property tax, in respect of any property owned by a co-operative housing society registered under that Act, remains unpaid, after a bill for the same has been duly served on the society primarily liable for the payment thereof, the Commissioner may serve a bill on each of the tenant-members of the society for such portion of the sum due as bears to the whole amount due the same ratio which the rent estimated under section 154 in respect of his tenement bears to the aggregate amount of estimated rent for the whole property.

(2) If the tenant-member fails within fifteen days from the service of any such bill to pay the amount therein claimed,

the same amount may be recovered from him, as if the amount were a property tax due by him.

(3) If any sum is paid by, or recovered from, a tenant-member under this section, he shall be entitled to credit thereof in account with the society primarily liable for the payment of the same.

Explanation - For the purposes of this section, the expression "tenant-member" in the case of a tenant co-partnership co-operative housing society, means a member of such society to whom a tenement has been allotted by the society in the building owned by it."

2. When this Petition came up for hearing, the Court had called upon the Municipal Corporation to submit a statement quantifying the liability of the defaulting shopkeepers viz. Respondents 5 to 10. Accordingly a statement dated 15th April, 2005 signed by the Assistant Assessor and Collector in the K-West Ward has been placed on the record.

From the statement, counsel for the Municipal Corporation has stated before the Court that the liability of Respondents 5 to 10 for the period 1997-2004 on account of property taxes inclusive of sewerage taxes is Rs.43,45,708/-. In addition, the Corporation has demanded a total penalty of Rs.6,41,868/-.

3. Counsel for Respondents 5 to 10 has stated before the Court on instructions that these Respondents are ready and willing to deposit in instalments the property taxes as reflected in the statement together with sewerage taxes as demanded. Counsel, however, submitted that thereafter the aforesaid Respondents may be permitted to file a representation before the Assessor and Collector, including on the question of penalty. Accordingly, Counsel has made a statement that an amount of Rs.10 lacs shall be paid to the Municipal Corporation within a period of one week from today and that the balance shall be paid in instalments of Rs.5 lacs per month to be paid to the Municipal Corporation on or before the 7th day of each succeeding month until the entire arrears exclusive of penalty are deposited. Counsel appearing for

the Petitioner has stated that the remaining liability that is due and payable by the Co-operative society shall be made by a payment to the Municipal Corporation within a period of four weeks from today.

4. Accordingly, the Petition is disposed of with the following directions :

i) Respondents 5 to 10 agree and undertake before this Court through their learned counsel that they shall pay to the Municipal Corporation the total outstandings on account of property taxes inclusive of sewerage taxes, quantified at Rs.43,45,708/- in the following manner :

a) An amount of Rs.10 lacs shall be paid to the Municipal Corporation within a period of one week from today;

b) An amount of Rs.5 lacs shall be paid monthly on or before the 7th day of each succeeding month until the entire liability is duly met. The last

instalment shall be of the balance which is due and payable;

ii) The Municipal Corporation shall furnish a break up shopwise of the outstanding liabilities to Respondents 5 to 10 within a period of two weeks from today;

iii) In the event there is any default on the part of Respondents 5 to 10 in meeting the aforesaid schedule for payment, the Municipal Corporation shall be at liberty to take action in accordance with law against the defaulting shopowners;

iv) The Petitioner shall pay the outstandings that are due and payable in respect of the balance of the liability due and owing by the Co-operative society within a period of four weeks from today;

v) Respondents 5 to 10 would be at liberty to submit a representation to the Assessor and Collector within a period of four weeks from today in regard to the quantification

of the property taxes including sewerage taxes and in respect of penalty. The representation shall be taken up for consideration conditional on the Petitioner first making the entire payment to the Corporation as stated hereinabove. In the event that the entire payment is made as directed herein above, the Assessor and Collector shall pass orders on the representation in accordance with law after furnishing Respondents 5 to 10 an opportunity of being heard;

vi) For the period commencing from October 2005, the Assessor and Collector shall take steps to segregate the bills in respect of the property taxes and other liabilities that are due and payable in respect of the shops and in the event of default, he would be at liberty to take action in accordance with law.

There shall be no order as to costs.